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EDWARD S. WRIGHT 1100 ALMA STREET, SUITE 207 MENLO PARK, CA 94025			EXAMINER GROSSO, HARRY A	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/726,763  
Filing Date: December 02, 2003  
Appellant(s): CLIVE-SMITH ET AL.

**MAILED**

**JUN 25**

**Group 1**

\_\_\_\_\_  
Edward S. Wright  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 26 April 2007 appealing from the Office action mailed 24 November 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

3,459,326	BETJEMANN	8-1969
3,386,600	BETJEMANN	6-1968

5,388,532	WAKANO	2-1995
4,144,984	SAUNDERS	3-1979

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 20-22, 24, 26-28, 31, 34-36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betjemann (3,459,326) in view of Wakano (5,388,532).
3. Regarding claims 20, 21, 24, 26 and 36, Betjemann discloses a support post of adjustable length with first and second elements having detent openings and a plurality of predetermined indexed positions (11, 11A, Figures 1 and 3), and a detent (34, 35, Figures 5, 8, 9) to hold the elements in the indexed positions for both lifting and stacking loads. Betjemann does not disclose the detent comprises a flat plate that has a flat face bearing surface. Wakano discloses a support post of adjustable length with a detent that is a flat plate with flat face bearing surfaces (54, 74, Figures 1, 2 and 4) that is inserted into openings with opposing flat surfaces for holding the post elements in indexed positions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a flat faced detent corresponding in

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size to a substantial portion of the post cross section and corresponding detent openings with flat sides as disclosed by Wakano in the post disclosed by Betjemann to spread the stacking and lifting loads over a larger cross section of the post elements.

4. Regarding claim 22, Betjemann discloses a transverse rail (15) and an operating element (34A, 36A) that is movable relative to the rail.

5. Regarding claim 27, Betjemann discloses a container (Figure 1) with posts retractable to reduce the cross section of the container.

6. Regarding claim 28, Betjemann discloses the container having adjustable support posts that allow the cross-sectional profile of the container to be adapted to fit through passages of limited dimensions.

7. Regarding claim 31, Betjemann discloses header portions (15 and 16) which are movable end gates (Figure 1, column 3, lines 51-53).

8. Regarding claim 34, Betjemann disclosed the posts extending upward and having transverse header beams and capture and handling fittings (20) on the upper ends of the posts.

9. Regarding claims 35 and 38, Betjemann as modified by Wakano discloses the post for a freight container with a flat faced detent as discussed above. The detent pins are of slender rectangular profile and the apertures are rectangular and of short height as taught by Wakano.

10. Claims 20-22, 24, 26-29, 32, 34-36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betjemann (3,386,600) in view of Wakano.

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11. Regarding claims 20, 21, 24, 26 and 36, Betjemann '600 discloses a support post of adjustable length with first and second elements having detent openings and a plurality of predetermined indexed positions (23A, 23B, Figures 3 and 4), and a detent (32, Figures 4) to hold the elements in the indexed positions for both lifting and stacking loads. Betjemann '600 does not disclose the detent has a flat face bearing surface.

Wakano discloses a support post of adjustable length with a detent that is a flat plate with flat face bearing surfaces (54, 74, Figures 1, 2 and 4) that is inserted into openings with opposing flat surfaces for holding the post elements in indexed positions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a flat faced detent corresponding in size to a substantial portion of the post cross section and corresponding detent openings with flat sides as disclosed by Wakano in the post disclosed by Betjemann '600 to spread the stacking and support loads over a larger cross section of the post elements.

12. Regarding claim 22, Betjemann '600 discloses a transverse rail (29, 30) and an operating element (The head of detent 32) that is movable relative to the rail.

13. Regarding claim 27, Betjemann discloses a container (Figure 3) with posts retractable to reduce the cross section of the container.

14. Regarding claim 28, Betjemann discloses the container having adjustable support posts that allow the cross-sectional profile of the container to be adapted to fit through passages of limited dimensions.

15. Regarding claim 29, Betjemann '600 discloses a header of deep cross section (29, 30, Figure 3).

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16. Regarding claim 32, Betjemann '600 discloses a gate (29, 30, column 4, lines 71-75) suspended from the posts with bracing between posts and the deck through the sidewalls (27, 28).

17. Regarding claim 34, Betjemann '600 disclosed the posts extending upward and having transverse header beams and capture and handling fittings (34) on the upper ends of the posts.

18. Regarding claims 35 and 38, Betjemann '600 as modified by Wakano discloses the post for a freight container with a flat faced detent as discussed above. The detent pins are of slender rectangular profile and the apertures are rectangular and of short height as taught by Wakano.

19. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betjemann '600 and Wakano in view of Saunders (4,144,984). Betjemann '600 and Wakano disclose the invention except for discrete movable header portions mounted on the support posts as movable end gates. Saunders discloses a container with discrete movable headers mounted to support posts and movable as end gates (21, 22, Figure 1) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of discrete movable header portions mounted on the support posts as movable end gates as disclosed by Saunders in the container disclosed by Betjemann '600 and Wakano to provide an easy means for accessing the container deck from the end of the container without having to remove the end gate completely from the container.

**(10) Response to Argument**

**Claims 20-22, 24, 26-28, 31, 34-36 and 38**

Appellant argues the Betjemann '326 reference does not disclose the detent with flat face bearing surfaces. In response the Wakano reference provides a teaching of the use of detents with flat face bearing surfaces.

Appellant argues the detents of Wakano do not pass through aligned openings in the two post elements but are slid into horizontal grooves in the inner side walls of the front stanchion supports and the stanchions rest upon them and would be pulled out if a lifting load were applied. Appellant further argues that if such plates were incorporated into Betjemann the upper post sections would simply rest upon them.

In response, Betjemann '326 discloses a support post of adjustable length with first and second elements having detent openings and a plurality of predetermined indexed positions (11, 11A, Figures 1 and 3), and a detent (34, 35, Figures 5, 8, 9) to hold the elements in the indexed positions for both lifting and stacking loads. Wakano discloses a support post of adjustable length with a detent that is a flat plate with flat face bearing surfaces (54, 74, Figures 1, 2 and 4) that is inserted into openings with opposing flat surfaces for holding the upper post elements in indexed positions (53, Figure 2, column 4, lines 47-50). Wakano is used as a teaching for the use of a flat plate detent for the support of an upper post element. Since the detent of Betjemann '326 is inserted through corresponding detent openings in the first and second post elements, it would be obvious to incorporate the flat plate detent concept taught by Wakano in Betjemann '326 by providing detent openings in both the first and second post elements



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that correspond to the shape of the detent since that is the mode of operation of Betjemann '326. There would be no reason to limit the flat plate detent to merely supporting the bottom of the second post element as in Wakano since Betjemann already teaches the use of detent openings in both post elements and a detent to hold the elements in indexed positions for both lifting and stacking loads.

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, appellant argues there is no basis for the suggestion that it would have been obvious to use a detent and openings with flat sides to spread stacking and lifting loads. It is recognized that motivation can be found in knowledge generally available to one of ordinary skill in the art. In this instance claim 20 of the instant application recites a support post of adjustable length, both Betjemann references disclose support posts of adjustable length and Wakano discloses a support post of adjustable length. The references are analogous art and the use of the flat plate as a detent to spread the stacking and lifting loads over a larger cross section of the post elements would be knowledge generally available to one of ordinary skill in the art.

Appellant argues that Betjemann '326 and Wakano do not disclose a container and Betjemann ' discloses an open gondola. In response, both Betjemann '326 and Wakano are containers capable of containing freight. It appears that appellant is using the term container in the context of a shipping container such as those used on ships, etc. Betjemann '326 is equipped with corner fittings for shipment in a similar manner as the containers of appellant and Betjemann ' 326 indicates his container can be handled in the same manner on ships and with other containers (see column 1, lines 38 to 58 for example). While Betjemann calls his container a shipping gondola, it is plainly an open type of container.

Regarding claim 35 appellant argues that the references do not provide a post of adjustable length for supporting both stacking and lifting loads with openings and detents having flat sides. In response, Betjemann '326 as modified by Wakano provides the claimed structure as discussed above.

Regarding claim 36, appellant argues the references do not suggest apertures with opposing flat surfaces which are aligned with each other when one post section is in predetermined positions relative to the other, and a detent plate having opposing flat surfaces for insertion into the apertures. In response, Betjemann as modified by Wakano discloses the apertures with opposing flat surfaces which are aligned with each other when one post section is in predetermined positions relative to the other, and a detent plate having opposing flat surfaces as discussed above.

Regarding claim 38 appellant argues the references do not teach a laterally extending rectangular openings which are aligned with each other when one post

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section is extended to a predetermined position relative to another and a relatively flat detent pin of rectangular cross section which can be inserted into the aligned openings to hold the second section in a predetermined position. In response, Betjemann '326 as modified by Wakano provides the claimed structure as discussed above.

**Claims 20-22, 24, 26-28, 31, 34-36 and 38**

Appellant argues the Betjemann '600 reference does not disclose the detent with flat face bearing surfaces. In response, the Wakano reference provides a teaching of the use of detents with flat face bearing surfaces.

Appellant states that the same arguments apply to Betjemann '600 in view of Wakano as discussed above in relation to Betjemann '326 in view of Wakano. In response, the responses presented above for Betjemann '326 in view of Wakano apply to Betjemann '600 in view of Wakano.

**Claims 30 and 31**

Appellant argues there is that there is no suggestion to combine the Saunders reference with Betjemann '600 as modified by Wakano. In response, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, appellant argues that Saunders is an entirely different type of structure than the gondola of Betjemann '600 and the pallet of

Wakano and there is no basis or reason for the combination. In response, Betjemann discloses an open container with movable header portions mounted to the support posts and spanning the posts (29 and 30, Figure 3 and column 4, lines 71-75 of Betjemann '600). Betjemann '600 as modified by Wakano does not teach discrete movable header portions mounted on the support posts as movable end gates. Saunders discloses a container with discrete movable headers mounted to support posts and movable as end gates (21, 22, Figure 1). The container of Saunders is an open top container as shown in Figure 1 capable of being used in this configuration. See column 1, lines 56 –67 of Saunders. Thus, both Betjemann '600 and Saunders are open containers with movable header portions between the posts. It is recognized that motivation can be found in knowledge generally available to one of ordinary skill in the art. One of ordinary skill in the art would have knowledge of headers movable as end gates to allow access to the container deck from the end of the container without having to remove the end gate completely from the container.

Appellant argues there is no motivation for using adjustable posts in the container of Saunders. In response, the Examiner has not suggested modification of Saunders to have adjustable posts.

Appellant argues that Betjemann '600 and Wakano do not disclose a container and Betjemann ' discloses an open gondola. In response, both Betjemann '600 and Wakano are containers capable of containing freight. It appears that appellant is using the term container in the context of a shipping container such as those used on ships, etc. Betjemann '600 is equipped with corner fittings for shipment in a similar manner as

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the containers of appellant and Betjemann ' 600 indicates his container can be handled in the same manner on ships and with other containers (see column 2, lines 10-18 for example). While Betjemann '600 calls his container a shipping gondola, it is plainly an open frame type of container.

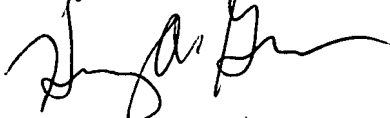
**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Harry A. Grosso



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